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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE ALBERT CORNEJO,

Defendant and Appellant.

B215136

(Los Angeles County
Super. Ct. No. BA348463)

APPEAL from a judgment of the Superior Court of Los Angeles County,
William C. Ryan, Judge. Affirmed.

William Hassler, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillete, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson
and Robert David Breton, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Jorge Albert Cornejo of misappropriating lost property. Over his objection, the trial court admitted evidence that defendant was a parolee, based on a finding that the evidence was relevant to his motive for the current crime. Defendant contends that the evidence was more prejudicial than probative under Evidence Code section 352 and should have been excluded. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background.

A. Prosecution case.

On October 22, 2008, Jose Montes Deoca parked his car outside his place of work. Intending to go inside for a short time, he left his keys in the ignition and his wallet, which contained his California identification and driver's license, in the car. About \$700 was also in the car. When he came out, he saw his car, driven by man with skin lighter than defendant's, pass by. A passenger sat next to him. Deoca's car was found a week later, but it had been stripped.

On October 29, 2008, seven days after Deoca's car was stolen, Detective Joseph Garrido and Deputy Edmundo Torres were looking for defendant, a parolee. The officers had a photograph of him. When defendant exited the house the officers had under surveillance, Detective Garrido identified himself. The detective asked defendant for his name. Defendant answered that it was Jose Deoca. Although the detective asked defendant for his name at least six times, defendant never identified himself as Jorge Cornejo. When asked for identification, defendant gave the detective Deoca's California identification card. The detective thought that the photograph on the identification card looked like defendant.

Deputy Torres addressed defendant by his name (Jorge Cornejo), and this upset defendant, who seemed not to want to give his name. The deputy thought that defendant was not the person pictured in the California identification card.

B. *Defense case.*

Defendant testified that the night before he was arrested, he found Deoca's identification card on the street close to the curb. He put it in his wallet, planning to mail it to Deoca the next day. He didn't mail it immediately because it was late at night (about 11:00 p.m.) when he found it. He was arrested the next morning.

When police officers asked for his name, he told them it was Jorge Cornejo.

In 2007, he was convicted of attempted robbery and burglary.

II. Procedural background.

On February 4, 2009, a jury found defendant guilty of misappropriating lost property (Pen. Code, § 485),^{1, 2} but not guilty of receiving stolen property (§ 496, subd. (a)). At a subsequent court trial, the court found that defendant suffered three prior convictions. On March 24, 2009, he was sentenced to the low term of 16 months, doubled to 32 months under the Three Strikes law (§§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)).

DISCUSSION

I. Defendant's parole status was admissible under Evidence Code section 352.

The trial court, over defense objection, allowed in evidence that defendant was on parole at the time of his arrest for the current crime. Defendant contends that the court abused its discretion under Evidence Code section 352 by allowing in the evidence, creating prejudicial error. We disagree.

A. *Additional facts.*

Before trial, defense counsel asked the trial court to exclude evidence defendant was on parole. The prosecutor responded that the evidence went to consciousness of guilt and motive: officers were at a particular location looking for defendant and when

¹ All further undesignated statutory references are to the Penal Code.

² Section 485 provides in part: "One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use . . . without first making reasonable and just efforts to find the owner and to restore the property to him [or her], is guilty of theft."

they asked his name, defendant produced the stolen identification. The court agreed that defendant's parolee status went to motive: "And so I think the People have a right to put on evidence that he had a motive to have somebody else's—to use someone else's identity to avoid detection by the police. That's not unduly prejudicial. [¶] The probative value is quite high"

Then, throughout the trial, references were made to defendant's status as a parolee:

- During opening argument, the prosecutor said that detectives were "on the lookout for a parolee named Jorge Cornejo, the defendant, and on October 29, 2008, the detectives who were looking for the defendant, the parolee, they went to the location [¶] The detective . . . wanted to verify that the person that he believed to be the parolee they were looking for was, in fact, the right person[.]" "[I]n fact, it was the defendant[,] Jorge Cornejo, the parolee[,], that they were looking for"
- Detective Garrido testified that defendant "was advised that he was a parolee."
- Detective Garrido was asked if he was familiar with parole conditions parolees are subject to.
- Deputy Torres testified that he accessed a parole database to get a photograph of defendant and that he knew defendant was a parolee, and that was why the police were looking for him. He also said that he was familiar with parole conditions parolees are advised of when they are released from custody. One condition required parolees to give an address where they reside, but the address defendant was located at was not the address he reported to the parole office.
- In her closing statement, the prosecutor summed up the evidence: "The facts as we know are as follows: [¶] That the defendant is a parolee." She continued, "[s]o what reasonable inferences can we draw? Well, we know that the defendant is a parolee, and we know that the defendant is aware of his parole obligations that he's supposed to give his true name. [¶] . . . [¶] Well, the reasonable inference is that he's on parole. He would have a motive to disguise who he is. A reasonable inference [is] . . . that he just happened to find a driver's license of a male

Hispanic that kind of looks like him. That's a huge coincidence. [¶] Or the more reasonable inference . . . would be that the defendant went looking for a form of identification to carry with him so that if stopped by a police officer for any number of reasons—jaywalking or a traffic violation—and he pulled that out of his wallet, at a glance it looks like him. [¶] . . . So that would be the reasonable inference that the defendant knew the license was stolen because he got it from somewhere else, and his motive to get it was to conceal his identity should he be approached by officers. [¶] He is on parole. He is in a place where he is not supposed to be, the abandoned house.”

B. *The trial court did not abuse its discretion by admitting evidence of defendant's parole status.*

Evidence Code section 1101, subdivision (a),³ prohibits the admission of other crimes evidence for the purpose of showing the defendant's bad character or criminal propensity. Other crimes evidence, however, is admissible against a defendant “ ‘when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than his or her disposition to commit such an act.’ ” (*People v. Catlin* (2001) 26 Cal.4th 81, 145; see also Evid. Code, § 1101, subd. (b).) Like other circumstantial evidence, its admissibility depends on the materiality of the fact sought to be proved, the tendency of the prior crime to prove the material fact, and the existence or absence of some other rule requiring exclusion.

³ Evidence Code section 1101 states: “(a) Except as provided in this section and in [s]ections 1102, 1103, 1108, and 1109, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion. [¶] (b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act. [¶] (c) Nothing in this section affects the admissibility of evidence offered to support or attack the credibility of a witness.”

(*People v. Roldan* (2005) 35 Cal.4th 646, 705, disapproved on another ground by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; see also *People v. Whisenhunt* (2008) 44 Cal.4th 174, 203.)

Even if other crimes evidence is admissible under Evidence Code section 1101, subdivision (b), it may be excludable under Evidence Code section 352 if its probative value was substantially outweighed by the probability its admission would cause undue prejudice. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 404 [“Evidence of uncharged offenses ‘is so prejudicial that its admission requires extremely careful analysis’ ”].) The “prejudice” Evidence Code section 352 refers to applies to evidence which “ ‘uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.’ ” (*People v. Karis* (1988) 46 Cal.3d 612, 638.) “ ‘ “[P]rejudicial” is not synonymous with “damaging.” ’ ” (*Ibid.*)

Evidence of defendant’s parolee status, while damaging, was not prejudicial within the meaning of Evidence Code section 352. Defendant was charged with receiving stolen property and with misappropriating it. His status as a parolee established a motive for both crimes. He could have received the stolen identification card or misappropriated it to obscure his true identity. In fact, that is exactly what he tried to do: when confronted by police officers, defendant repeatedly said his name was Jesse Deoca and denied his name was Jorge Cornejo. When pressed further, he handed Deoca’s identification card to the officers.

Defendant, however, argues that any “ ‘motive’ ” he had to get a false identification card to obscure his parolee status was immaterial “since he could not have known he would come upon such a card.” This argument, first, disregards how the case was charged. As we have said, the jury could have believed that defendant received the stolen identification card because he needed an alternate identity. That the jury ultimately rejected this view of the case is irrelevant to the admissibility of the evidence at the outset of trial. It was certainly plausible, as defendant suggests, that he intended to return the card the morning after he found it, but didn’t get the opportunity. Defendant’s status as a parolee, however, was evidence that he had a motive to keep it. Second, even

if the jury believed that defendant just happened upon the card on the street, the jury could have also believed he then decided to keep or “misappropriate” it and use it to establish a fake identity. (See, e.g., *People v. Moses* (1990) 217 Cal.App.3d 1245, 1256 [“under section 485, the property does not become stolen by misappropriation until the holder knows of the true owner’s identity and then fails to take reasonable steps to restore the property to its rightful owner”].)

Moreover, the likelihood of any prejudicial impact was lessened because the jury was given limiting instructions regarding evidence of defendant’s parole status: “If you find that a witness has been convicted of a felony, you may consider that fact in evaluating the credibility of the witness’s testimony. The fact of a conviction does not necessarily destroy or impair a witness’s credibility. It is up to you to decide the weight of that fact and whether that fact makes the witness less believable.” “During the trial, evidence of the defendant’s prior felony convictions and possible status as a parolee was admitted for . . . limited purposes. You may consider that evidence only for those purposes and for no other ones. [¶] You may consider evidence of a defendant’s prior felony conviction only in evaluating the defendant’s credibility and believability and his status as a possible parolee only for the limited purpose of deciding whether the defendant had a motive to commit the crimes charged. You may not consider this evidence for any other purpose. [¶] You may not conclude from this evidence that the defendant is a person of bad character or that he has a disposition to commit [a] crime.” We generally presume that the jury followed instructions. (*People v. Pinholster* (1992) 1 Cal.4th 865, 925, disapproved on another ground in *People v. Williams* (June 28, 2010, S029490) [2010 WL 2557530 (Cal.)].)

We therefore conclude that the trial court did not abuse its discretion by admitting evidence defendant was a parolee; the evidence was more probative than prejudicial.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.